

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

448D0704

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1197** - 2/9/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representative Wilson

1 FOR AN ACT ENTITLED, An Act to exempt mentally retarded persons from the death penalty
2 and to provide for a determination of mental retardation in such cases.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
5 as follows:

6 Notwithstanding any other provision of law, the death penalty may not be imposed upon any
7 person who was mentally retarded at the time of the commission of the offense and whose mental
8 retardation was manifested and documented before the age of eighteen years.

9 Section 2. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 As used in this Act, mental retardation means significant subaverage general intellectual
12 functioning existing concurrently with substantial related deficits in applicable adaptive skill
13 areas. An intelligence quotient exceeding seventy on a reliable standardized measure of
14 intelligence is presumptive evidence that the defendant does not have significant subaverage
15 general intellectual functioning.

16 Section 3. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Not later than ninety days prior to the commencement of trial, the defendant may upon a
3 motion alleging reasonable cause to believe the defendant was mentally retarded at the time of
4 the commission of the offense, apply for an order directing that a mental retardation hearing be
5 conducted prior to trial. If, upon review of the defendant's motion and any response thereto, the
6 court finds reasonable cause to believe the defendant was mentally retarded, it shall promptly
7 conduct a hearing without a jury to determine whether the defendant was mentally retarded. If
8 the court finds after the hearing that the defendant was not mentally retarded at the time of the
9 commission of the offense, the court shall, prior to commencement of trial, enter an order so
10 stating, but nothing in this paragraph precludes the defendant from presenting mitigating
11 evidence of mental retardation at the sentencing phase of the trial. If the court finds after the
12 hearing that the defendant established mental retardation by a preponderance of the evidence,
13 the court shall prior to commencement of trial, enter an order so stating. Unless the order is
14 reversed on appeal, a separate sentencing proceeding under this section may not be conducted
15 if the defendant is thereafter convicted of murder in the first degree. If a separate sentencing
16 proceeding is not conducted, the court, upon conviction of a defendant for the crime of murder
17 in the first degree, shall sentence the defendant to life imprisonment without parole.

18 Section 4. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
19 as follows:

20 If the court enters an order pursuant to section 3 of this Act finding that the defendant was
21 mentally retarded at the time of the commission of the offense, the state may appeal as of right
22 from the order. Upon entering such an order, the court shall afford the state a reasonable period
23 of time, which may not be less than ten days, to determine whether to take an appeal from the
24 order finding that the defendant was mentally retarded. The taking of an appeal by the state stays
25 the effectiveness of the court's order and any order fixing a date for trial.

1 Section 5. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
2 as follows:

3 If a defendant serves notice pursuant to section 3 of this Act, the state may make application,
4 upon notice to the defendant, for an order directing that the defendant submit to an examination
5 by a psychiatrist, licensed psychologist, or licensed psychiatric social worker designated by the
6 state's attorney, for the purpose of rebutting evidence offered by the defendant. Counsel for the
7 state and the defendant have the right to be present at the examination. A videotaped recording
8 of the examination shall be made available to the defendant and the state's attorney promptly
9 after its conclusion. The state's attorney shall promptly serve on the defendant a written copy of
10 the findings and evaluation of the examiner. If a defendant is subjected to an examination
11 pursuant to an order issued in accordance with this section, any statement made by the defendant
12 for the purpose of the examination is inadmissible in evidence against the defendant in any
13 criminal action or proceeding on every issue other than that of whether the defendant was
14 mentally retarded at the time of the commission of the offense, but such statement is admissible
15 upon such an issue whether or not it would otherwise be deemed a privileged communication.

16 Section 6. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
17 as follows:

18 The provisions of this Act apply only to offenses alleged to have been committed by the
19 defendant after the effective date of this Act.

20 Section 7. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read
21 as follows:

22 The provisions of this Act are essentially and inseparably connected and interdependent.

1 **BILL HISTORY**

2 1/19/00 First read in House and referred to committee assignment waived. H.J. 141

3 1/20/00 Referred to State Affairs.

4 1/31/00 Deferred to 36th legislative day, AYES 9, NAYS 4. H.J. 324

5 1/31/00 Scheduled for Committee hearing on this date.

6 2/8/00 State Affairs Reconsidered, AYES 11, NAYS 2.

7 2/8/00 State Affairs Do Pass Amended, Passed, AYES 12, NAYS 1.